IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.6.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) No.294 of 2004

The Commissioner of Income Tax
Nungambakkam High Road
Chennai-34. .. Appellant

Vs

M/s.Parry Confectionary Ltd
Dare House
Madras - 600 001. .. Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai, 'B' Bench dated 7.11.2003 made in I.T.A.No. 320/Mds/1997 for the assessment year 1993-94 against the order of the Commiossioner of Income tax (Appeals-V) Madras dated 29.11.1996 in IT/WT/GT/appeals No. ITA.No. 62/96-97 against the order of the Deputy Commissioner of Income Tax Special Range VI Madras -34 dated 15.3.1996 and made in PAN/GIR/No. 47-004-CZ-6871/12-P.

For Appellant : Mrs.Pushya Sitaraman
Sr.Standing Counsel (IT)
For Respondent: Mr.M.P.Senthilkumar

JUDGMENT

(Delivered by P.D.DINAKARAN,J.)

This appeal is directed against the order of the Income Tax Appellate Tribunal, Madras, 'B' Bench dated 7.11.2003 made in I.T.A.No.320/Mds/1997 for the assessment year 1993-94, raising the following substantial questions of law:

"(i) Whether on the facts and in the circumstances of the case, the Tribunal is right in law in holding that a sum of Rs.7,33,000/- being the excise duty on the closing stock not cleared from the factory should not be included? and

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(ii) Whether on the facts and in the circumstances of the case, the Tribunal is right in law in not following the judgment of the Supreme Court reported in 266 ITR 99 wherein it has been clearly held that under Section 43B, the deduction is to be made only on the actual payments?"

2.1. The Assessing Officer, while valuing the closing stock, included the excise duty element on the stock cleared from the factory and also on the closing stock not cleared from the factory. On appeal, by the assessee, the Commissioner of Income Tax (Appeals) deleted the said additions made by the Assessing Officer.

2.2. The Tribunal, in the appeal preferred by the Revenue, following CIT v. English Electric Co. of India Ltd., [2000] 243 ITR 512 held that the excise duty liability is not to be included in the valuation of closing stock. Hence, the present appeal raising the substantial questions of law referred to above.

3. When the matter was taken up for final hearing today, Mrs.Pushya Sitaraman, learned Senior Standing Counsel for the appellant fairly conceded that the first issue raised in this appeal is squarely covered in favour of the assessee by the decision of this Court in Commissioner of Income-tax v. English Electric Co. of India Ltd.[2000] 243 ITR 512, which was also followed in Commissioner of Income-tax v. Dynavision Ltd. [2004] 267 ITR 600.

4. In Commissioner of Income-tax v. English Electric Co. of India Ltd., [2000] 243 ITR 512, the Division Bench of this Court held as under:

"the liability for payment of excise duty was incurred when the process of manufacture was complete in relation to an excisable item. All payments and liability incurred towards duty were exhibited separately. The assessee's liability for payment of duty could not be regarded as part of the assets held by the assessee in the form of higher value assigned to the closing stock. A liability could not be converted into an asset in that manner. A liability was an item deductible for the purpose of arriving at the profits for the year and only when such deduction was given the amount could be added to the value of the closing stock. "

5. Following the ratio laid down in the decision referred supra, this Court in Commissioner of Income-tax v. Dynavision Ltd. [2004] 267 ITR 600 held as under:

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"The liability for payment of excise duty is incurred only when the process of manufacture is complete. Such liabilities are shown in the excise duty account maintained by the assessee. The inclusion of excise duty in the valuation of closing stock is permissible only if the liability for that amount in the excise duty account was given as a deduction. Thus, the excise duty liability is not to be included in the valuation of closing stock."

6. In view of the law enunciated from the decisions referred supra, we are of the firm opinion that the excise duty on the closing stock not cleared from the factory should not be included while valuing the closing stock. Accordingly, we answer the first substantial question of law raised in favour of the assessee and against the Revenue.

7. As far as the second substantial question of law raised is concerned, the same being only consequential, we are of the considered opinion that the same need not be answered.

In the result, this appeal is dismissed. No costs.

sasi

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1. THE ASSISTANT REGISTRAR,
INCOME-TAX APPEALLATE TRIBUNAL,
RAJAJI BHAVAN, BESANT NAGAR, CHENNAI

2. THE COMMISSIONER OF INCOME TAX
(APPEALS-V), MADRAS.

3. THE COMMISSIONER OF INCOME TAX
TAMIL NADU-I, MADRAS.

4. THE DEPUTY COMMISSIONER OF
INCOME TAX, SPECIAL RANGE VI, MADRAS.

+ One cc to M/s. Pusya Sitaraman Counsel for Income Tax SR 35683

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sg 3/7/07

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